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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 174/2013

SHRI MIZAL ALI

..... Petitioner

Through Mr.B.L.Chawla, Advocate.

versus

SMT OM WATI (DECEASED) THR HER LEGAL HEIR SHRI
SATISH GOEL

..... Respondent

Through Mr.Bharat Bhushan Bhatia and Mr.
J.B.Saini, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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21.04.2016

Petitioner is aggrieved by the impugned order dated 04.7.2013 passed by the Civil Judge wherein the execution petition filed by the decree-holder (Mizal Ali) seeking execution of an ex parte decree dated 23.2.1987 had been dismissed. The impugned order had noted that the period of limitation for execution of the decree would be 12 years which period expired on 24.02.2000. The execution petition was barred by time. The objections filed by the judgement debtor had been decided in his favour. The Court was of the view that the decree has become infructuous in the eyes of law. It is this order which had been impugned before this Court.

Learned decree-holder has drawn attention of this Court to the chequered history of this case. Admittedly, an ex parte decree had been

obtained by the decree-holder on 23.02.1987. Warrants of possession were ordered against the suit property. Thereafter an application under Order IX Rule 13 of the CPC seeking setting aside of the ex parte decree was filed by the defendant/non-applicant. This application came to be dismissed on 14.02.1992. An appeal was filed against that order. The Appellate Court had also dismissed the appeal on 30.3.1996. Execution petition was again filed by the decree-holder for the execution of the decree. Objections to the execution petition were filed by one of the legal representatives of the original judgement-debtor as the original judgement-debtor had expired on 07.01.2003.

It is these objections and the execution petition which has been decided by the impugned order. Learned counsel for the judgement-debtor points out that provisions of Section 15 of the Indian Limitation Act, 1963 (hereinafter referred to as the said Act) have not been adhered to and the submission of the petitioner that the ex-parte decree had been stayed at various stages by various Courts and the period during which the decree remained stayed, had to be excluded for the purposes of limitation; this has not been considered in the impugned order. Per contra, learned counsel for the judgement-debtor submits that the provisions of Section 15 of the said Act had not been argued.

Be that as it may, the parties are relegated back to the Executing Court where the Court shall consider the impact of Section 15 of the Limitation Act and whether or not there was a stay of ex parte decree dated 23.02.1987 at any stage of the proceedings shall also be pointed out and which the Executing Court shall consider. The objections filed in the Executing Court shall also be considered on their merits.

Parties are directed to appear before the District Judge (Central District) on 16.5.2016 on which date the District Judge (Central District Judge) shall mark the matter to a Court of competent jurisdiction.

With these directions petition disposed of.

INDERMEET KAUR, J

APRIL 21, 2016
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